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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1079 of 2002

Petitioner		Smt. Anjum Ishaque, W/o Shri Zia Ishaque, aged about 62 years, (Retired In-charge Principal Devaki Nandan Municipal Corporation Girls' Higher Secondary School, Bilaspur), R/o Opposite Bihari Talkies, High Court Road, Bilaspur(Chhattisgarh).
	Versus	
Respondents	1.	Municipal Corporation, Bilaspur, Through it's Commissioner, Bilaspur (Chhattisgarh).
	2.	Mayor-in-Council, Municipal Corporation, Bilaspur, Through it's Commissioner, Bilaspur (Chhattisgarh).
	3.	State of Chhattisgarh, Through Principle Secretary, Department of Local Self Government, Government of Chhattisgarh, D.K.S. Bhawan,Raipur (Chhattisgarh).

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Petitioner by Shri K. A. Ansari, Senior Advocate with Shri M. K. Sinha, Advocate.

Respondents No. 1 and 2 by Shri A. S. Kachwaha, Advocate.

Respondent No.3 by Shri Sandeep Dubey, Govt. Advocate.

ORAL ORDER

(3rd January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition is filed by the petitioner who was working as Principal in Devaki Nandan Girls Higher Secondary School, Bilaspur, seeking a declaration that the petitioner be deemed as promoted on the post of Principal w.e.f. 18.11.1996. Vide order dated 18.11.1996 (Annexure P/8) whereby the petitioner was promoted to the post of Principal by the Commissioner, Municipal Corporation, Bilaspur. The

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petitioner has also prayed for consequential benefits of difference of wages and retiral benefits.

2. The undisputed facts in nutshell are that the petitioner was appointed as Upper Division Teacher on 7.9.1960. She was promoted to the post of Lecturer on 22.8.1976. Thereafter she was promoted to the post of Vice Principal on 29.8.1986. The Respondents No. 1 and 2 vide order dated 18.11.1996 promoted the petitioner to the post of Principal and posted at Devakinandan Girls Higher Secondary School, Bilaspur.

3. Prior to the appointment order dated 18.11.1996 the Municipal Corporation resolved on 15.11.1996 to promote the petitioner to the post of Principal along with other persons who were promoted to different posts. The Respondent No.1 vide letter dated 30.11.1996 {Annexure R-1(B)} wrote to the Secretary, Government of Madhya Pradesh, Local Administration Department for granting approval for promotion of the petitioner on the post of Principal on the basis of merit-cum-seniority as contemplated under Section 58(1)(iii) of the Chhattisgarh/Madhya Pradesh Municipal Corporation Act, 1956 (for short 'the Act'). The Respondent No.3 vide its letter dated 11.9.1997 {Annexure R-1(C)} returned the file of approval with certain objections that though 5 years confidential reports (A.C.R.) were considered but weightage to the academic qualification was given which is not in accordance with the rules. In addition to this one mark was awarded for each year's seniority which was not necessary as the gradation list was prepared on the basis of seniority. It was directed in the letter that the departmental promotion committee would be immediately convened and recommendations be made in accordance with law. The same was directed to be sent to the Government immediately. On 15.11.1999 {Annexure R-1(E)} the Respondent No.1 passed an order that the State Government vide its letter dated 11.9.1997 has directed

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to consider the case of the Principal/Vice-Principals/Lecturers for promotion by the departmental promotion Committee(D.P.C.) in accordance with law. It was clearly stated that the departmental promotion committee would be held immediately and the recommendations would be sent to the Government for further action. This order was communicated to all concerned. The petitioner retired on 31.12.2001 on attaining the age of superannuation.

4. Shri K. A. Ansari, learned senior Advocate with Shri M.K. Sinha, learned Advocate appearing for petitioner submits that the petitioner had acquired legal right on the basis of her promotion order to the post of Principal, passed by the Respondents No. 1 and 2 and the petitioner was further permitted to continue to perform job responsibility of the Principal till she retired on superannuation. Learned counsel submits that the Respondents No. 1 and 2 by not complying with the direction of the State Government cannot deprive the petitioner from her right and consequential benefits. Learned counsel further contends that the petitioner has been paid pensionary benefits in accordance with the pay scale of the Vice Principal.

5. Shri A. S. Kachwaha, learned counsel appearing for the Respondents No. 1 and 2 per contra submits that the petitioner was performing the job of the Principal not as Principal but as Incharge Principal. Learned counsel has no reply to the query as to what the Corporation had done pursuant to the letter dated 11.9.1997 of the State Government/Respondent No.3.

6. Shri Sandeep Dubey, learned Govt. Advocate appearing for the Respondent No.3 submits that it was for the Municipal Corporation to comply with the letter dated 11.9.1997 of the State Government and to send the recommendation back. The Respondents No. 1 and 2 have not complied with the direction of the State Government and as such

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approval as contemplated under section 58(1)(iii) of the Act, 1956 could not be granted.

7. I have heard learned counsel for the parties and perused the documents appended to the writ petition as well as to the return filed by the respondents. It is clearly established that the petitioner was promoted as Principal vide resolution dated 15.11.1996 passed by the Standing Committee of the Corporation and the order dated 18.11.1996 passed by the Respondent No.1. The compliance of the provisions of Section 58(1)(iii) of the Act, 1947 has to be done by the Corporation. The petitioner had rightly expected her position as Principal and had accordingly worked in the school. The Respondents No. 1 and 2 had not taken any steps to comply with the direction of the State Govt. dated 11.9.1997 {Annexure R-1(C)} of the State Government. The petitioner has acquired right by virtue of the fact that she was granted promotion and had received the order accordingly from the Respondents No. 1 and 2. The petitioner had also performed her job responsibility of the Principal till she attained the age of superannuation.

8. For the reasons stated above, the Respondents No. 1 and 2 are directed to hold a D.P.C. within a period of one month from today for obtaining approval of the State Government as on 18.11.1996. The petitioner will be entitled to all the consequential benefits.

9. The petition is accordingly allowed. No order as to costs.

Certified copy, as per Rules.

Sd/-
Satish K. Agnihotri
Judge

Thakur